

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

SHALER L. EAGLE

Petitioner,

v.

Civil Action No. 2:08-1176

WILLIAM FOX, Warden,  
St. Mary's Correctional Center

Respondent.

MEMORANDUM OPINION AND ORDER

Pending is a petition for writ of habeas corpus  
pursuant to 28 U.S.C. § 2254, filed July 28, 2008.

This action was previously referred to Mary E. Stanley,  
United States Magistrate Judge, who, on October 21, 2008,  
submitted her Proposed Findings and Recommendation ("PF&R")  
pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). On  
October 30, 2008, the petitioner filed objections to the PF&R.

The magistrate judge recommends that the petition for  
writ of habeas corpus be dismissed on the ground that it is a  
second or successive petition that has not been authorized by the  
Fourth Circuit Court of Appeals. Petitioner objects, asserting  
that he filed a request for a certificate of appealability and

suggesting that his request was not forwarded to this court when his petition was transferred on October 10, 2008, from the Northern District of West Virginia.<sup>1</sup> It appears that the petitioner is confusing the certificate of appealability required to take an appeal to the court of appeals with the requirement that he obtain an order from the court of appeals authorizing him to file a second or successive petition. His objections otherwise fail to address the substance of the magistrate judge's PF&R.

Additionally, the petitioner encloses with his objections a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive application for relief under 28 U.S.C. §§ 2254 or 2255, dated October 29, 2008. He states in his objections that "[i]n the event that the Notice of Intent to Appeal and initial briefs are not acceptable, a 2244 form is inclosed (sic) with this mailing." The motion under 28 U.S.C. § 2244 is not properly before this

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<sup>1</sup> On July 28, 2008, petitioner filed a document titled "Nature of Petition. Notice of Intent to Appeal." Therein, he requested a certificate of appealability. The District Court for the Northern District of West Virginia construed this filing as a petition for writ of habeas corpus under 28 U.S.C. § 2254 and docketed the petition accordingly. This document, along with several others, were forwarded to this court when the petition was transferred.

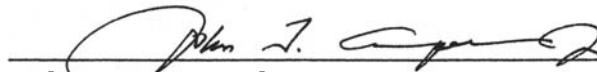
court and should be forwarded to the United States Court of Appeals for the Fourth Circuit.

No objection having been filed to the substance of the magistrate judge's PF&R, the court ORDERS as follows:

1. The PF&R be, and it hereby is, adopted by the court and incorporated herein;
2. The section 2254 petition be, and it hereby is, denied;
3. This action be, and it hereby is, dismissed and stricken from the docket; and
4. The petitioner's motion under 28 U.S.C. § 2244 be forwarded to the United States Court of Appeals for the Fourth Circuit for consideration.

The Clerk is directed to forward copies of this written opinion and order to the pro se petitioner, all counsel of record, and the United States Magistrate Judge.

DATED: November 10, 2008

  
John T. Copenhaver, Jr.  
United States District Judge